

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2021-23-C**

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SC PUBLIC SERVICE  
COMMISSION

IN RE:

Joint Application of Charter Fiberlink SC-CCO, LLC )  
and Time Warner Cable Information Services (South )  
Carolina), LLC for Designation as Eligible )  
Telecommunications Carriers to Receive Rural )  
Digital Opportunity Fund Auction (Auction 904) )  
Support for Voice and Broadband Services and )  
Request for Expedited Consideration. )  
\_\_\_\_\_ )

**MOTION FOR  
PROTECTIVE ORDER**

Charter Fiberlink SC-CCO, LLC and Time Warner Cable Information Services (South Carolina), LLC (each individually, a “Charter Entity” and collectively, the “Charter Entities”) hereby move this Honorable Commission pursuant to S.C. Code Ann. Regs. 103-829 for a protective order strictly protecting from public disclosure, as well as disclosure to any party who may intervene in this proceeding, the confidential version of the Joint Application of Charter Fiberlink SC-CCO, LLC and Time Warner Cable Information Services (South Carolina), LLC for Limited Designation as Eligible Telecommunications Carriers to Receive Rural Digital Opportunity Fund Auction (Auction 904) Support for Voice and Broadband Services and) Request for Expedited Consideration (“Joint Application”), marked as “Confidential Version,” attached hereto as Attachment A, and included herewith in a separate, sealed envelope.<sup>1</sup>

The Charter Entities submit that strict protection of the Confidential Version of the Joint

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<sup>1</sup> The confidential and proprietary data and information is located at Exhibit H of the attached application. A public version of this application has been filed electronically which is identical to the confidential version attached herewith except that a placeholder is provided in the public version in lieu of Exhibit H that advises that this exhibit is designated confidential and filed under seal.

Application is appropriate in this proceeding to ensure compliance with Federal Communications Commission (“FCC”) rules, regulations, and orders relating to prohibited communications by Rural Digital Opportunity Fund Auction (Auction 904) (“RDOF Auction”) applicants, as well as to protect the Charter Entities’ commercially sensitive and trade secret information from public disclosure; and further, that such protection advances the state’s public interest in timely delivering high-quality broadband services to unserved residences and businesses throughout South Carolina.

Therefore, the Charter Entities respectfully request that the Commission adopt and issue the proposed Protective Order attached as Attachment B to this Motion. In support hereof, the Charter Entities would respectfully show as follows:

1. CCO Holdings, LLC (“CCO Holdings”), an affiliate of the Charter Entities, was selected as a winning bidder in South Carolina under the FCC’s RDOF Auction<sup>2</sup> and assigned portions of its winning bid to each of the Charter Entities.

2. Each Charter Entity’s receipt of RDOF Auction funding is conditioned upon it obtaining designation as an eligible telecommunications carrier (“ETC”) in its respective RDOF Census Blocks.<sup>3</sup> Accordingly, each Charter Entity seeks ETC designation in the RDOF Census Blocks in South Carolina for which it was awarded funding from the RDOF Auction.

3. FCC rules, regulations, and orders governing RDOF Auction applicants “prohibit an applicant from communicating with another applicant with respect to its own, or one another’s, or any other competing applicant’s bids or bidding strategies,” including “post-auction market structure.”<sup>4</sup> The FCC interprets “bids or bidding strategies” expansively to include, *inter alia*,

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<sup>2</sup> See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, Public Notice, DA 20-1422 (Dec. 7, 2020) (“*Auction 904 Results Notice*”).

<sup>3</sup> See *Auction 904 Results Notice*, at ¶ 36.

<sup>4</sup> *Public Notice, Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020*,

“[h]ow an applicant participates in an auction” and “subject matters that could convey cost or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.”<sup>5</sup>

4. This broad prohibition against communicating auction-related information is not limited to direct communications strictly between RDOF Auction applicants, but also “includes *public disclosures* as well as private communications and indirect or implicit communications.”<sup>6</sup>

5. FCC rules, regulation, and orders prohibiting public disclosure of certain auction-related communications “took effect as of the short-form application filing deadline, i.e., July 15, 2020, at 6:00 p.m. ET, and extends until the deadline for filing the long-form application portion of FCC Form 683, i.e., **January 29, 2021, at 6:00 p.m. ET.**”<sup>7</sup>

6. The Confidential Version of the Joint Application at Exhibit H contains certain data and information that if publicly disclosed, whether directly or indirectly, or produced to a party-intervenor, may violate FCC prohibited communications rules under 47 C.F.R. § 1.21002.

7. Data and information restricted from public disclosure under FCC rules relating to prohibited communications by RDOF Auction applicants is exempt from public disclosure under the South Carolina Freedom of Information Act (“FOIA”). *See* S.C. Code Ann. § 30-4-30(A) (providing that a “person has a right to inspect, copy, or receive ... any public record of a public body, *except as otherwise provided by ... federal laws*” (emphasis added)); *see also* S.C. Code

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*Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90, FCC 20-77 (rel. Jun. 11, 2020) (*Filing Requirements and Procedures Notice*) at ¶¶ 152, 154.

<sup>5</sup> *Public Notice, Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announces, FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90, DA 20-1422 (rel. Dec. 7, 2020) (*Winning Bidder Notice*) at ¶ 34.

<sup>6</sup> *Filing Requirements and Procedures Notice* at ¶ 149 (emphasis added).

<sup>7</sup> *Winning Bidder Notice* at ¶ 32 (emphasis in original).

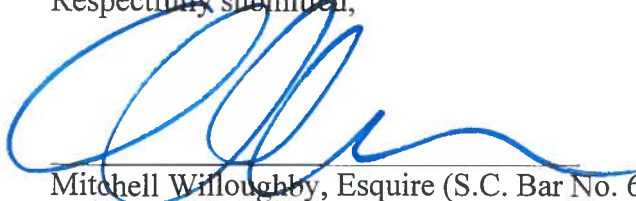
Ann. § 30-4-40(a)(4) (exempting from public disclosure under FOIA “[m]atters specifically exempted from disclosure by statute or law”).

8. Further, the information contained Exhibit H to the Confidential Version of the Joint Application should not be disclosed because it is commercially sensitive trade secret information, the disclosure of which would harm the Charter Entities and damage their ability to compete in the marketplace. More specifically, the disclosure of this information would give the Charter Entities’ competitors an understanding of the Charter Entities’ costs, marketing strategy, and activities, thereby providing those competitors with an advantage that would hinder the Charter Entities’ ability to compete. FOIA likewise recognizes that trade secrets are exempt from disclosure under those provisions of law, *see* S.C. Code Ann. § 30-4-40(a)(1), as do the South Carolina Rules of Civil Procedure, *see* SCRCP 26(c) (providing that a court may order “that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way”).

9. Given the high magnitude of particularized harm to the Charter Entities and the State of South Carolina of a FCC prohibited communications rule infraction, and particularized harm to the Charter Entities in the marketplace in the event of disclosure of commercially sensitive and confidential information, the Charter Entities respectfully assert that the proposed protective order, attached hereto as Attachment B, is warranted and appropriate in this proceeding and compelled by the public interest at stake.

WHEREFORE, the Charter Entities respectfully request that the Commission consider this matter on an expedited basis and adopt and issue the Charter Entities’ proposed protective order accompanying this Motion and for such other and further relief as the Commission may deem just and proper.

Respectfully submitted,



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Columbia, South Carolina  
January 5, 2021